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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 WESTMARK EMERALD POINTE LLC, a
11 Washington limited liability company.

12 Plaintiff,

13 v.

14 CITY OF BURIEN, a Washington municipal
15 corporation,

16 Defendant.
17

Case No. C19-1821 RSM

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND AND
TO REMAND

18 This matter comes before the Court on Plaintiff Westmark Emerald Pointe LLC
19 ("Westmark")'s Motion for Leave to Amend and to Remand State Claims. Dkt. #16. Defendant
20 does not oppose Plaintiff's motion for leave to amend but opposes remand of the remaining
21 claims to state court. Dkt. #19. Having reviewed the Motion, Defendant's Response, Plaintiff's
22 Reply, and the remainder of the record, the Court GRANTS Plaintiff's Motion for leave to amend
23 and to remand the remaining state claims.
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25 **I. BACKGROUND**
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27 Westmark filed this case in Washington Superior Court for King County on October 22,
28 2019 alleging several state law claims and one federal law claim under 42 U.S.C. § 1983. Dkt.

ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO AMEND AND TO
REMAND - 1

1 #1-1. Defendant promptly removed the action to this Court pursuant to 28 U.S.C. § 1441(a)
2 because of Westmark’s federal claim. Dkt. #1. On November 12, 2019, Westmark amended its
3 complaint to add a jury demand, and Defendant filed its answer shortly thereafter. Dkts. #6, #11.

4 On December 5, 2019, Westmark filed the instant motion seeking to dismiss its federal
5 claim and remand the case to state court. Dkt. #16. Defendant does not oppose Westmark’s
6 motion to amend but, if granted, opposes remand of this action to state court. Dkt. #19.

8 II. DISCUSSION

9 A. Motion to Amend

10 Leave to amend must be “freely [given] when justice so requires.” Fed. R. Civ. P. 15(a).
11 The purpose of the rule is to encourage decisions on the merits rather than on the precision of the
12 pleadings. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Defendant does not oppose
13 Westmark’s motion for leave to amend. Dkt. #19 at 1.

14 Accordingly, Westmark’s unopposed Motion for Leave to File an Amended Complaint
15 is GRANTED.
16

17 B. Motion to Remand

18 The Court will now address Westmark’s motion to remand, which Defendant opposes.
19 *Id.* at 2. Parties agree that if leave to amend is granted, the Court may continue to exercise
20 supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367 since
21 “supplemental jurisdiction is ‘analyzed on the basis of the pleadings filed at the time of removal
22 without reference to subsequent amendments.’” *Hunt Skansie Land, LLC v. City of Gig Harbor*,
23 No. C10-5027RBL, 2010 WL 2650502, at *3 (W.D. Wash. July 1, 2010) (quoting *Sparta*
24 *Surgical Corp. v. Nat’l Ass’n of Sec. Dealers*, 159 F.3d 1209, 1213 (9th Cir. 1998)). For that
25 reason, supplemental jurisdiction does not “fall away” because of subsequent amendment. *Id.*
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1 Accordingly, the question before the Court is whether it should continue to exercise supplemental
2 jurisdiction over the claims or allow Westmark to remand its claims.

3 District courts have discretion to exercise or decline supplemental jurisdiction upon
4 consideration of “the values of judicial economy, convenience, fairness, and comity.” *Carnegie–*
5 *Mellon University v. Cohill*, 484 U.S. 343, 350 (1988). While “in a case in which all federal
6 claims are eliminated before trial, the balance of these factors will generally point toward
7 declining to exercise jurisdiction over the remaining state law claims . . . this[] is not a mandatory
8 rule to be applied inflexibly in all cases.” *Nishimoto v. Federman–Bachrach & Assoc.*, 903 F.2d
9 709, 715 (9th Cir. 1990). However, the Ninth Circuit has noted that judicial economy typically
10 weighs most heavily in a trial court’s analysis. *See Schneider v. TRW, Inc.*, 938 F.2d 986, 994
11 (9th Cir.1990) (“[I]t is the district judge who is in the best position to determine whether enough
12 resources have been expended to make dismissal a waste at any given point.”).

15 Here, judicial economy favors remand. Besides briefing on the instant motion, no
16 substantive pleadings or motions have been filed after Defendant served its answer on November
17 26, 2019. *See* Dkt. #11. This action is still in its initial stages, and the Court has not expended
18 significant resources addressing parties’ claims. *Cf. Hunt Skansie Land*, 2010 WL 2650502, at
19 *2 (court denying remand where case pending for six months and court ruled on summary
20 judgment briefing). When all federal claims are withdrawn early in a case, a court has a
21 “powerful reason to choose not to continue to exercise jurisdiction.” *Carnegie-Mellon*
22 *University*, 484 U.S. at 350. Such is the case here.

25 The Court likewise finds that fairness favors remand. There is no dispute that Westmark
26 seeks to amend its complaint in order to move for remand. The Ninth Circuit has addressed such
27 strategies at the early stages of a case, finding that a plaintiff’s decision to dismiss its own claims
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1 and seek remand is merely tactical—not manipulative. *Baddie v. Berkeley Farms, Inc.*, 64 F.3d
2 487, 491 (9th Cir. 1995) (filing federal claims in state court “is a legitimate tactical decision by
3 the plaintiff: it is an offer to the defendant to litigate the federal claims in state court.”). The
4 Ninth Circuit noted that such behavior only becomes manipulative or unfair if a party originally
5 brought its federal claims “in bad faith or for the sole purpose of putting defendants through the
6 removal-remand procedure” *Id.* at 490. Here, Defendant does not allege that Westmark
7 brought its federal claim in bad faith or sought to put Defendant through the removal-remand
8 procedure.
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10 Instead, Defendant argues that by seeking leave to amend at this stage in the case,
11 Westmark is unfairly attempting to manipulate the forum. Dkt. #19 at 3. Defendant analogizes
12 this case to *Hunt Skansie Land*, wherein the court chastised plaintiff for attempting to compel
13 remand by amending its complaint. *Id.* (citing 2010 WL 2650502, at *4). The Court finds
14 Westmark’s actions readily distinguishable from those of the *Hunt Skansie* plaintiffs. In *Hunt*
15 *Skansie*, plaintiffs waited until the Court ruled against them on summary judgment to try to
16 remove the federal claims and escape jurisdiction. The court found that their calculated decision
17 to dismiss their federal claims after they received an adverse ruling was akin to “letting a gambler
18 take its chips off the table because it didn’t like the dealer’s hand.” *Id.* (internal quotations
19 omitted). Here, in contrast, the case is still in its initial stages and the Court has made no
20 dispositive rulings. For that reason, the Court finds that fairness weighs in favor of allowing
21 Westmark to remand its remaining state claims.
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25 Regarding the last two factors, the Court finds that convenience and comity may also
26 favor remand. Westmark has filed a separate administrative tort claim against Defendant that
27 may potentially develop into a state court action. *See* Dkt. #15. Should Westmark’s
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1 administrative tort claim develop into another lawsuit, remanding the instant case to state court
2 would provide parties the opportunity to consolidate Westmark's claims and thereby expedite
3 resolution of this matter. Dkt. #16 at 6-7.

4 Accordingly, the Court finds that factors weigh in favor of declining to exercise
5 supplemental jurisdiction over Westmark's state law claims and allowing remand. Plaintiff's
6 Motion to Remand is therefore GRANTED.
7

8 III. CONCLUSION

9 Having reviewed the relevant pleadings, the declarations and exhibits attached thereto,
10 and the remainder of the record, the Court hereby finds and ORDERS that:

- 11 1. Plaintiff's Motion for Leave to Amend is GRANTED. Within seven (7) days from the
12 date of this Order, Plaintiff shall file the Second Amended Complaint.
- 13 2. Plaintiff's Motion for Remand of Remaining State Claims is GRANTED. This Order of
14 Remand shall be effective upon Plaintiff's filing of the Second Amended Complaint, at
15 which time the case shall be REMANDED to the King County Superior Court of
16 Washington State.
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18 DATED this 17th day of January 2020.
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21 RICARDO S. MARTINEZ
22 CHIEF UNITED STATES DISTRICT JUDGE
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